



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. S337136

MARK DOLAN,
Appellant.

COMMISSIONER OF REVENUE
Appellee.

SINGLE MEMBER DECISION
ISSUED UNDER THE SMALL CLAIMS PROCEDURE

The Commissioner's Motion to Dismiss is allowed and the decision is for the appellee. Pursuant to G.L. c. 58A, § 7B, the following written summary of the reasons for the decision is provided to the parties.

This appeal involved personal income taxes assessed to the appellant for the tax years ending December 31, 2009, December 31, 2010, December 31, 2011, December 31, 2012, and December 31, 2013. Prior to the commencement of the July 1, 2019 hearing of this appeal, the Commissioner of Revenue filed a Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"), which the Presiding Commissioner took under advisement, and now allows for the following reasons.

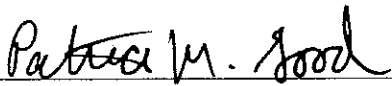
Under the provisions of G.L. c. 62C, § 39 ("§ 39"), a person aggrieved by the refusal of the Commissioner to abate a tax, interest, or penalties may file an appeal with the Appellate Tax Board ("Board") within sixty days from the date of the Notice of Abatement Determination issued by the Commissioner. The record in the present appeal showed that the Commissioner denied the appellant's abatement application by Notice of Abatement Determination dated June 26, 2018. The appellant filed his appeal with the Board on October 16, 2018, 112 days after the Notice of Abatement Determination and fifty-six days after the last date on which he could have timely filed his appeal in accordance with § 39.

The appellant's failure to timely file his appeal with the Board is fatal to the Board's jurisdiction. See, e.g. **Commissioner of Revenue v. Pat's Supermarket, Inc.**, 387 Mass. 309, 311 (1982) (quoting **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975)) ("Adherence to the statutory prerequisites is essential to [an] 'effective application for abatement of taxes and to [the] prosecution of appeals from refusals to abate taxes.'"); **Nissan Motor Corp. in U.S.A. v. Commissioner**


of Revenue, 407 Mass. 153, 157 (1990) ("The board lacks subject matter jurisdiction over abatement proceedings where the process was commenced at a later time or prosecuted in any manner different from that dictated by statute."). The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. **Pat's Super Market Inc.**, 387 Mass. at 311. Neither the courts nor this Board have the authority to create an exception to the time limit specified by statute. **Sears Roebuck & Co. v. State Tax Commission**, 370 Mass. 127, 130 (1976); **Peterson v. Commissioner of Revenue**, Mass. ATB Findings of Fact and Reports 1994-305.

Because the appellant failed to file his appeal within the time limits set forth by § 39, the Presiding Commissioner found and ruled that the Board lacked jurisdiction to hear and decide this appeal. Accordingly, the Commissioner's Motion to Dismiss is allowed and the decision is for the appellee.

APPELLATE TAX BOARD



Patricia M. Good, Commissioner

Attest: 

Clerk of the Board

Date:
(Seal) **SEP 12 2019**